#### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Document 25

| E. GLUCK CORPORATION, | Plaintiff, | )<br>)<br>)<br>Civil Action No.:<br>) 08 Civ. 3466 (VM)(RLE) |
|-----------------------|------------|--|
| v.                    |            | ) ECF Case   |
| ADAM ROTHENHAUS,      |            | )<br>) Filed Electronically                                  |
|                       | Defendant. | )<br>)   |
|                       |            | )<br>)   |

#### **DECLARATION OF ADAM ROTHENHAUS**

- I, Adam Rothenhaus, state as follows:
- 1. I am the Defendant in this action.
- 2. After 5 p.m. on March 25, 2008, I received an e-mail from Marc P. Misthal of Gottlieb Rackman & Reisman, P.C. I responded by e-mail the following night. A true copy of the e-mail correspondence is attached as Defendant's Exhibit DA.
- 3. One of my first steps before launching The Now Watch was to see if there was anything in the marketplace similar to what I had in mind. I did extensive Internet research that was probably most intense back in December of 2005. As I recall, I found a few people who were also trying to encourage people to live in the present moment in a similar manner. There were a few Now Clocks out there already sharing the message. I recall learning about an artist of some sort

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that made his own NOW watch but was not making it available for to the general public.

- 4. Some time later, I recall finding out about a Now Watch in a catalog for a company called Signals but is was not a functional watch. It looked like a watch and was to be worn like a watch but did not tell the time. It just said the word NOW on the face in almost faded letters covered in sand or something along those lines. To my knowledge this product is no longer available.
- 5. During my early Internet research, I never saw anything about Armitron's Now Collection. I found out about the Armitron Now Collection in August 2006 when I heard from the trademark office about Gluck's mark. I figured out Gluck was better known as Armitron and checked out Armitron's website. There I discovered the Armitron Ladies Now Collection.
- 6. I believed then, as I still do, that The Now Watch is different from Armitron's Now Collection.
- 7. Since I set out actively on this venture in 2006 I have intermittently continued my Internet research. I've learned that more people are doing similar work trying to remind people that the time is now. There are more Now Clocks and Now Watches out there in various forms being made by different people.
- 8. The Now Watch appeals primarily to people actively trying to focus their attention on the present moment. This often includes people who are spiritual seekers, those recovering from some sort of physical or mental trauma, or those simply trying to reduce the stress in their lives that comes from worrying about the past or the future.

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- 9. Some customers and potential customers find The Now Watch inspiring, some soothing, others motivating, and still others just think it is funny. But everyone I've communicated with is primarily interested because of the message. They want to be reminded to live in the present moment. They are not people who are merely shopping for another watch.
- 10. The mission of The Now Watch is to bring more presence to people's lives. While producing watches is a necessary component of this venture, I do not think of myself as just another person selling watches. I consider myself more of an artist sharing the message to live in the NOW. I do not think of my customers as people who just want to buy another watch. I think of my customers as people who want to be reminded to live in the NOW. The Now Watch does this in a uniquely effective manner.
- 11. I have received many encouraging e-mails from people who support the message embedded within The Now Watch. Many people tell me they love the idea but some go into even more detail about why they are interested in The Now Watch.
- 12. I have heard from a heart-attack victim (Defendant's Exhibit DB), a facilitator at an organization that helps troubled youth (Defendant's Exhibit DC), and those involved with drug and alcohol recovery programs (Defendant's Exhibit DD). These are the messages I find most inspiring. These are the messages that motivate me to stand firm and fight for The Now Watch.
- 13. I registered a copyright in my watch design. Defendant's Exhibit DE is a copy of the registration.

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- I received a business certificate for The Now Watch in New York County 14. on October 11, 2007. Defendant's Exhibit DF is a copy of the registration.
- I could not register the domain, www.thenowwatch.com when I first tried 15. in December 2005 because it was taken. I backordered the domain and received it in early 2006.
- Defendant's Exhibit DG is a printout of the pages of the website, 16. www.thenowwatch.com. The printout shows the text as black on a white background, while the website has reverse and color text.
- The Now Watch come with a five-year warranty. 17.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statement is true and correct.

Dated: July 10, 2008

Adam Rothenhaus

#### **Adam Rothenhaus**

From:

"Adam Rothenhaus" <arothenhaus@nyc.rr.com>

To:

"Marc Misthal" <mmisthal@grr.com>

Sent: Subject: Wednesday, March 26, 2008 10:51 PM Re: Infringement of NOW Trademark

Dear Mr. Misthal:

I received your e-mail and the FedEx package. I referred this matter to my attorney. Please direct all further contact to her:

Elizabeth Shieldkret P: 718-997-0290 Attorney at Law F: 718-997-0291

85-86 67th Avenue E: es@eshieldkret.com

Rego Park, New York 11374 W: http://www.eshieldkret.com

Yours truly - Adam Rothenhaus

---- Original Message -----

From: Marc Misthal

To: arothenhaus@nyc.rr.com; adam@thenowwatch.com

Cc: Richard Schurin

Sent: Tuesday, March 25, 2008 5:08 PM Subject: Infringement of NOW Trademark

#### **VIA FEDERAL EXPRESS**

and E-MAIL (arothenhaus@nyc.rr.com)

Mr. Adam Rothenhaus 20 East 9th Street, Apr. 6W New York, New York 19993

Re: E. Gluck Corp.- Infringement of NOW Trademark

Sir:

Our firm represents E. Gluck Corp. ("Gluck") of Long Island City, New York, with respect to the protection of Gluck's trademarks and related proprietary rights. Gluck is an extremely well-known designer and marketer of watches, and sells its products throughout the world.

Gluck is the exclusive owner of the NOW trademark used for watches. The NOW trademark is the subject of an incontestable registration in the United States Patent and Trademark Office. A copy of our client's registration is enclosed.

We have recently discovered that you have registered the domain name <thenowwatch.com> and, accordingly, that you are using our client's trademark as the dominant part of your domain name. We further understand that the domain name is associated with a website offering watches, including watches bearing the term "now", for sale. A printout of the website associated with <thenowwatch.com> is also enclosed.

We have also been advised that you filed Application Serial No. 78/809,166 to register THE NOW WATCH with the United States Patent and Trademark Office. That application has been refused based on our client's registration.

Be advised that your use of "The Now Watch", as well as your use of the domain name <thenowwatch.com> in connection with the sale of watches with the term "now" on their face, creates confusion as to our client's federally protected NOW mark, and therefore constitutes trademark infringement and unfair competition under

the Lanham Act, 15 U.S.C. § 1501 et seq. Moreover, since you were aware of Gluck's rights by virtue of the notice provided by the Trademark Office, your infringement is willful. The penalties for willful infringement are severe, and include treble damages and attorney's fees.

Additionally, your registration of the domain name <thenowwatch.com</pre> violates the Anti-Cybersquatting
Consumer Protection Act ("ACPA") and your company's registration agreement with GoDaddy.com, Inc., which
incorporates the Uniform Domain Name Dispute Resolution Policy ("UDRP"). In particular, your registration and
use of the domain name thenowwatch.com as described above is actionable under the ACPA and UDRP
because your domain name is confusingly similar to a trademark or service mark in which the complainant has
rights; because you have no rights or legitimate interests in respect of the domain name; and because
 and because

On behalf of our client, we request that you immediately cease and desist from using the name "The Now Watch," the domain name <thenowwatch.com> or any other confusingly similar term in connection with watches or the sale of watches. Additionally, we demand that you immediately transfer the domain name <thenowwatch.com> to our client, and that you request GoDaddy.com, Inc. to do the same.

We also advise you that any and all use of our client's trademark, whether as part of an e-mail address, domain name or the like, or in any other way, constitutes infringement of our client's trademark rights, unfair competition and dilution.

Accordingly, we call upon your company to forthwith cease and desist from any act of trademark infringement or unfair competition. Specifically, on behalf of our client, we demand that your company:

- 1) immediately cease use of the phrase "The Now Watch", the NOW mark or any other names similar thereto;
- 2) immediately transfer the domain name <thenowwatch.com> to our client;
- 3) forward to us documentation reflecting the manufacture, importation and sales of the infringing items to date;
- 4) indicate to us the remaining quantity of infringing products currently in inventory under your company's control; and
- 5) provide an accounting to us for all sales of these products made to date, and agree to compensate out client accordingly.

Our client views this matter with considerable concern. In view thereof, we expect your affirmative response, or that of your counsel, by 5:00 P.M. on **Friday, March 28, 2008**.

Please be advised that if you do not cease use of our client's trademark and transfer the domain name, our client has already authorized us to take such steps as may be necessary to protect our client's valuable trademark rights.

This letter constitutes notice of Gluck's trademark rights and is written without waiver of any rights and remedies that Gluck may assert to protect its intellectual property.

Very truly yours,

Marc P. Misthal GOTTLIEB RACKMAN & REISMAN, P.C. 270 Madison Avenue New York, NY 10016-0601 (212) 684-3900 (212) 684-3999 (Fax) Direct e-mail address: mmisthal@grr.com

This message is intended solely for the use of the

Addressee and may contain information that is PRIVILEGED and CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please erase all copies of the message and its attachments and notify us immediately. Thank You.

# Adam Rothenhaus

From:

"Henk B:

@vanbinnen.eu>

To:

<info@thenowwatch.com>

Sent:

Thursday, April 17, 2008 12:31 PM

Subject:

3x now watch

**Redacted** 

Hi,

After a heart-attack Mindfulness helped me a lot and I like the people who helped me with te revalidation and told me about mindfulness to thank, with the NOW watch

I like to order 3 of them

Is it possible that I pay on a bank account in advance and that you send them to me? aorry I have no visa

so if you send bankaccount number and swift and bic code and ordering number I can make a normal bank transfer.

I hope it's possible and you can tell me the total cost incl. shipping costs?

best regards

Henk B

EK Leiden netherlands



## Page 9 of 10

#### **Adam Rothenhaus**

From:

"Kelly Do

x.org>

To:

<info@thenowwatch.com>

Sent: Subject: Thursday, April 10, 2008 8:13 PM

awakening at risk teens

Redacted

Namaste...

My name is Kelly  $\Gamma$  and I currently function as a Community Facilitator for Foundation, Florida. I am assigned to the Truancy Reduction Program at the High School in ver, Florida and have 15 at risk teen clients to work with. I have been working with them on new ways of thinking and thus far have introduced them to The Secret (book & movie), and to Peaceful Warrior (movie), and soon to "A New Earth". I am searching for more materials, to inspire them and their families to think about different possibilities and ways of thought.

I visited your website and saw your "Now" watch. What a great way to remind us of the power "Now" brings! I think this would help the teens I work with remember to be present in the moment.

I feel that if I can entice the teens and their familes by viewing, and hearing new ideas, maybe we can become a better humanity together.

Do you offer package deals, or donations of products to non-profit agencies working with children? with gratitude...

Kelly D



## **Adam Rothenhaus**

From:

"marla l

er@kc.rr.com>

To: "marla l'

∍r@kc.rr.com>; <info@thenowwatch.com>

**Redacted** 

Sent: Subject: Wednesday, April 16, 2008 2:05 PM YOUR PRODUCTS

I'm interested in your NOW PRODUCTS. I'm working in various areas pf the recovery and spirituality community in KCMO. Publishing, training, seminars and workshops in diverse populations in the community. I'm interested in making your product available for clients as well as the workforce behind the "spiritual movement" including teachers, leaders, counselors, etc. Some may visit my website, others will attend my workshops and others will be the co-workers of specific institutions and municipalities. Please advise on your retail situation and/or the willingness, if any, to promote your product through my practice. Call Marla@913





This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Form VA
For a Work of the Visual Arts
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VA 1-403-682

EFFECTIVE DATE OF REGISTRATION

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Marybeth Teters
Register of Copyrights, United States of Amer

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# TRucinada Martificata

| Business Cettilitate   |
|--|
| I HEREBY CERTIFY that I am conducting or transacting business under the name or designation  |
| of The Now Watch   |
| at 20 East 9th Street Apt 6W, New York, New York 10003   |
| City or Town of New York County of New York State of New York.   |
| My full name is Adam Rothenhaus  |
| Print or type name. If under 21 years of age, state "I amyears of age".  |
| and I reside at 20 East 9th Street Apt 6W, New York, New York 10003  |
| I FURTHER CERTIFY that I am the successor in interest to   |
|  |
| the person or persons heretofore using such name or names to carry on or conduct or transact business.   |
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| STATE OF NEW YORK, COUNTY OF New York ss.:  On NCT 1 1 2007 before me, the undersigned, personally appeared Adam Rothenhaus  |
| personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed   |
| to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.   |
| Matthonie Africanal  |
| (signature and office of person taking acknowledgment)   |

Notary Starra



MATTHEW HOMENICK
Notary Public, State of New York
Reg. No. 04H06162308
Qualified in New York County
Commission Expires March 12, 20



X 201 Certificate of Conducting Business under an Assumed Name for Individual, 6-07

before me, the undersigned,

State of New York County of

personally appeared

County of

Oπ

before me, the undersigned,

personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(signature and office of individual taking acknowledgment)

(signature and office of individual taking acknowledgment)

xno. 2750/078 Certificate

CONDUCTING BUSINESS UNDER THE NAME OF

GBL §130.4. A certified copy of the original certificate, or if an amended certificate has been filed, then of the most recent amended certificate filed shall be conspicuously displayed on the premises at each place in which the business for which the same was filed is conducted.



Now

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# **Our Original Now Watch**

\$45.00 plus shipping & handling

#### **Product Description:**

Our Original Now Watch brings our <u>concept</u> to life for men, women, and children. We've carefully designed our Original Now Watch to find a happy medium of style and practicality for all people and activities.

This watch features a black leather band and a silver colored case with a stainless steel back. It is the first of a line of Now Watches that will exhibit a wide variety of face designs, band styles, colors, and price points to fit our customers' more specific wants and needs. Please contact us with any suggestions.

# Please Click Below to Begin Ordering Your Original Now Watch!



Note: For **corporate gifts** or other **bulk orders** designed to focus a large group of people on the present moment... please contact us at <a href="mailto:info@thenowwatch.com">info@thenowwatch.com</a> to initiate special arrangements.

Return Policy: If for any reason you are not completely satisfied with your purchase you may return your Now Watch within 21 days of your order and receive a full refund (less shipping and handling) credited to your credit card within one business day of when we regain possession of what you return to us. In this circumstance, please contact us to assure personal attention to your return.



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Order The Now Watch

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### **Store Locations**

If you are in the New York Metropolitan area and want to see Our Original Now Watch in person... please check out:

## **Brooklyn**

# 1:46 Watch Repair and Design Collective

146 North 7th Street Brooklyn, NY (By Bedford Avenue stop on the L train in Williamsburg) Map It

## Néda

A Contemporary Designer Boutique *There are two super cool stores in Brooklyn:* 

- Cobble Hill at 302 Court Street Map It
- Park Slope 413A Seventh Avenue Map It

#### Manhattan

# Christopher's

7 Greenwich Avenue New York, NY (Corner of Greenwich Avenue and Christopher Street in the West Village) Map It

#### Westchester

# **Beginnings Bleus**

575 Main Street Armonk, New York Map It

Are you interested in showing The Now Watch product line in your store, boutique, gift shop, or e-tail site?

From New Age shops and Yoga outlets to mainstream shopping malls, The Now Watch product line seeks a diverse range of purchasing opportunities for our customers.

If you believe any of the NOW Watch products within our line are a good fit for your retail business, please contact us at info@thenowwatch.com to join our expanding Now Watch Network.



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**Our Philosophy** 

Founder's Story | What's In Development?

## **Our Philosophy**

The Now Watch mission is to bring more presence to people's lives.

It's a simple goal but in a world where we are so busy and caught up trying to get things done, we rarely pause and take a moment to just be where we are right here and now. However, when we do appreciate the moment, we often feel a relaxing sensation, followed by an ability to focus and actually get more done in less time. In a sense, that's because it's always now. And when connected to the present moment, we are able to use our time to its fullest potential.

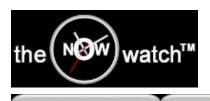
We've decided that a watch or a clock with the word NOW appearing prominently on the face is the perfect stimulus to help us access more presence in our lives. It works so easily... when we check our NOW watches and clocks, we'll find out the time of day as usual but will also be reminded that it is the present moment initiating a collision of the mystical with the utterly practical. Many people find it inspiring, some soothing, still others motivating, while others just laugh... but that's what make our timepieces what we consider to be functional pop-art left wide open to interpretation.

We believe we've hit on a radically simple concept that delivers a message in a fun, cool, and affordable way. Since the present moment is fundamental to every human, in every walk of life, our long term vision is to spread our products all around the world. Here are some sample translations into other languages:

Spanish - Ahora, Dutch - Nu, German - Jetzt, Greek - τώρα, Italian - Ora Portuguese - Agora, Russian - Τεπερь, Chinese - W

Our core value is simplicity which leads us to one final simple idea. We believe that the present moment is the greatest gift that there is here on earth. Therefore, our products seek to become the perfect gift people can buy for themselves and share with others worldwide.

Please contact us to bring more presence to your life and your community.



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Our Philosophy

**Founder's Story** | What's in Development?

## **Founders Story**

Perhaps The Now Watch always resided deep within its founder, Adam Rothenhaus, a lawyer, writer, philosopher, and entrepreneur based in New York City.

Throughout his youth Adam repeatedly heard great athletes, great artists, and great people in all walks of life attribute their good fortune to their ability to remain focused on the present moment. Yet he grappled to fully understand why. Then in 1996, after spending much of his early life dwelling on his past and worrying about his future, a profoundly simple truth struck him and explained the essence of their success.

It always was, always is, and always will be the present moment.

He decided to put this perspective to work and soon began harvesting the infinite potential of the present moment. In doing so he gained access to an unlimited resource of sublime beauty, indescribable joy, and lasting inner peace. He determined that this resource was the key to a happy, fulfilling, and successful life. But much more often than not... he just forgot about it.

In 2001, he played around inscribing the word NOW on a clock to remind himself of this resource. It worked, and he slowly began to share the idea for his reminder with others as a mechanism to bring more presence into more human lives. By 2006, he officially founded The Now Watch.

The rest continues to be an unfolding story of accumulating present moments...

Please feel free to contact Adam at adam@thenowwatch.com.



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Founder's Story | What's in Development?

## **Products in Development**



What's In Development?

The Now Watch vision seeks to develop a full line of watches, wall clocks, desk clocks, and even calendars to help bring more presence to people's lives.

Wherever a measurement of time intersects with the present moment we see an ideal opportunity to remind people that the time is always NOW.

Imagine now clocks hanging on the walls of our conference rooms, now desk clocks on our countertops, and now calendars pinned to our bulletin boards. All these reminders of the present moment are already in development.

Please contact us at <a href="mailto:info@thenowwatch">info@thenowwatch</a> if you want to help our potential materialize in any capacity. That includes new ideas, product design, production capabilities, capital investment, or any other developmental needs that may come to your mind.



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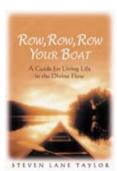
## **Our Community**

We are pleased to be developing a growing Now Watch community to show our appreciation for all those who share the vitality springing forth out of the present moment.

The simple goal of our community is to link together people and resources that can help deepen the human connection to NOW.

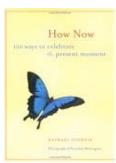
Please contact us at <u>info@thenowwatch.com</u> if you'd like to be what we'll consider a friend The Now Watch.

## Featured Friends of The Now Watch



Steven Lane Taylor is the Author of "Row Row Row Your Boat," a profoundly simple guide to living in harmony with life's divine flow. We love its simplicity and call to pay attention to what's happening in your life right Now. We also love walking down the street singing this little well-known jingle. Try it, singing softly to yourself, and see how quickly your perspective changes. Please check out <a href="https://www.rowrow.com">www.rowrowrow.com</a> to learn more about Steven, his book, his talks, and his workshops.

## <----- Buy This Book on Amazon.com



Raphael Cushnir is a popular contributor to O, the Oprah magazine. He is the author of several books including "How Now: 100 Ways to Celebrate the Present Moment," a well rounded mix of suggestions to bring more presence to people's lives making it a Now Watch favorite. Please check out <a href="https://www.hownow100.com">www.hownow100.com</a> to learn more about Raphael's book as well as <a href="https://www.innermanagement.biz">www.innermanagement.biz</a> for more about his talks,

training programs, and consultations.

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